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EXAMINER

PIZIALI, ANDREW T

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PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LENNART J. BRANDEL,
PER-OLOF GEORG ALGOTSSON, KRISTER DRAXÖ,
MICHAELA KLAUS, and ANDREY KALINAY

Appeal 2009-004597
Application 10/736,119
Technology Center 1700

Decided: May 18, 2010

Before BRADLEY R. GARRIS, ADRIENE LEPIANE HANLON, and
MARK NAGUMO, *Administrative Patent Judges*.

NAGUMO, *Administrative Patent Judge*.

DECISION ON APPEAL

A. Introduction¹

Lennart J. Brandel, Per-Olof Georg Algotsson, Krister Draxö, Michaela Klaus, and Andrey Kalinay (“Brandel”) timely appeal under 35 U.S.C. § 134(a) from the final rejection² of pending claims 1-10. We have jurisdiction under 35 U.S.C. § 6. We AFFIRM.

The subject matter on appeal relates to woven patterned glass fiber textile fabrics. According to Brandel, the prior art, represented by a patent to Moll (cited *infra*), could not produce a fabric on a Jacquard loom having warp fibers with a “titer” between 130 and 150 tex, and weft fibers having a titer between 190 and 400 tex.³ (Spec. 1, ll. 20-29.)

Representative Claim 1 is reproduced from the Claims Appendix to the Principal Brief on Appeal:

1. A woven, patterned glass fiber textile fabric comprised of a glass fiber yarn with
 - a titer of from 270 to 300 tex as the warp, and
 - a glass fiber yarn having a titer ranging from 68 to 600 tex as the weft.

(Br., Claims App. 1; indentation and paragraphing added.)

¹ Application 10/736,119, *Patterned Glass Fiber Textile*, filed 15 December 2003. The specification is referred to as the “119 Specification,” and is cited as “Spec.” The real party in interest is listed as Johns Manville. (Appeal Brief, filed 1 February 2008 (“Br.”), 2.)

² Office action mailed 21 May 2007 (“Final Rejection”; cited as “FR”).

³ Warp fibers are fixed to the frame of the loom, and may be shifted in front or behind the path of a shuttle, which draws the weft fibers across the warp fibers. A Jacquard loom can control the position of each warp fiber, enabling the production of a vast number of weaving patterns that may be very intricate. Tex is a measure of linear density: 1 tex = 1 g/1000 m of yarn.

The Examiner has maintained the following grounds of rejection:⁴

- A. Claims 1-9 stand rejected under 35 U.S.C. § 102(b), alternatively under 35 U.S.C. § 103(a) in view of Kölzer.⁵
- B. Claim 10 stands rejected under and 35 U.S.C. § 103(a) in view of the combined teachings of Kölzer and Workman.⁶
- C. Claims 1-6 stand rejected under 35 U.S.C. § 102(e), alternatively under 35 U.S.C. § 103(a) in view of Tokarsky.⁷
- D. Claims 7, 9, and 10 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Tokarsky and either Draxo⁸ or Edlund.⁹
- E. Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Tokarsky and Moll.¹⁰
- F. Claims 1-7, 9, and 10 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of either Draxo or Edlund, and Tokarsky.

⁴ Examiner's Answer mailed 9 April 2008. ("Ans."). The rejections have been reordered based on the principal reference applied.

⁵ Klaus K. Kölzer, *Material for Reinforcing Duroplastics Woven Fabric for Reinforcing Duroplastics having a Specific Distribution of Hollow Thermoplastic Microspheres within the Thread System*, U.S. Patent 5,292,578 (1994).

⁶ Gerald B. Workman and Lawrence R. Deardurff, U.S. Patent 3,870,547 (1975).

⁷ Edward William Tokarsky and William Chen Uy, *High Speed Melt Spinning of Fluoropolymer Fibers*, U.S. Patent 6,667,097 B2 (2003), based on an application filed 10 September 2002.

⁸ Krister Draxö and Thure Svensson, U.S. Patent 6,337,104 B1 (2002).

⁹ Per Edlund, U.S. Patent 6,759,116 B2 (2004), based on an application filed 1 May 2002.

¹⁰ Andre Moll, U.S. Patent 6,267,151 B1 (2001).

G Claims 1-6 stand rejected under 35 U.S.C. § 103(a) in view of Blalock.¹¹

H. Claims 7, 9, and 10 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Blalock and either Draxo or Edlund.

I. Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Blalock and Moll.

Brandel presents substantive arguments against the rejections in view of Kölzer, Tokarsky, and Blalock. Moreover, Brandel does not present separate arguments for the patentability of dependent claims rejected over these references. Arguments against rejections based on combinations of additional references with these references are essentially cumulative with the rejections of independent claim 1.

Accordingly, the rejected claims stand or fall with claim 1.

B. Discussion

Findings of fact throughout this Opinion are supported by a preponderance of the evidence of record.

Kölzer

The Examiner finds that Kölzer describes woven, patterned textiles made from glass yarns that meet the warp and weft tex limitations recited in claim 1; alternatively, the Examiner holds that such tex limitations would

¹¹ Paul B. Blalock and William G. Schwartz, *Process and Apparatus for Coloring Textile Yarns*, U.S. Patent 4,586,934 (1986).

have been obvious optimizations of the effects of warp and weft tex on the strength of the fabric, depth of pile, etc. (FR 2-3.)

Brandel argues that the Examiner has not given sufficient weight to the term “patterned” in claim 1, and that the Examiner’s finding that “a woven fiber design is a pattern” (FR 16) is erroneous. (Br. 6.) “Rather than a woven fiber design *being* a pattern,” Brandel argues, “glass fabrics can be woven *with* a pattern.” (Br. 6, citations to the 119 Specification omitted.)

The critical issue in this rejection is the meaning of the term “pattern” as used in claim 1.

During prosecution, claims are to be read broadly, in light of the specification and from the point of view of a person skilled in the art: but limitations are not to be read from the specification into the claims. In the present case, the 119 Specification does not define the term “pattern.” At most, one might infer that the term “pattern” can refer to an esthetically pleasing textile that might be prepared by a Jacquard weaving process. (Spec. 2, ll. 17-18.) We are not, however, permitted to read limitations from the specification into the claims. Moreover, claim 1 does not recite any limitations as to the kind of loom or weaving process that might require more structure than is present in the weaves described by Kölzer. Nor has Brandel come forward with credible evidence that the term “pattern” has been accorded a special meaning in the textile art. There is no credible extrinsic evidence that persons having ordinary skill in the art would have understood the term “pattern” to be restricted as Brandel argues. We also note that Kölzer shows two distinct weaves, in Figures 1 and 3, that would

result in different surface textures due to the different number of warp¹² threads the weft threads cover (one and two, respectively) as they alternate above and below the warp threads. Thus, Kölzer demonstrates at least two “patterns.” Thus, the preponderance of the evidence of record on this issue weighs in favor of the Examiner.

Brandel also argues that because Kölzer is directed to the fiber reinforcement of plastics, Kölzer is not in the same field of the claimed invention, nor is Kölzer concerned with the problems of making woven patterned glass fiber textiles. (Br. 5.) These objections do not establish harmful error in the Examiner’s rejections because they do not relate to limitations in claim 1, given the breadth of the term “pattern,” as explained *supra*.

We conclude Brandel has not shown harmful error in the Examiner’s rejection of claim 1 as anticipated by Kölzer. We therefore AFFIRM that rejection. We need not reach the issue of obviousness. The remaining rejected claims fall with claim 1.

Tokarsky

As Brandel points out (Br. 7), Tokarsky does not disclose or suggest a glass fiber textile. Rather, Tokarsky relates, particularly in the passages cited by the Examiner, to fluoropolymer fibers. In the absence of credible evidence that Tokarsky describes or suggests glass fibers as equivalents to fluoropolymer fibers, we REVERSE the rejections over Tokarsky.

¹² We use Brandel’s terminology, which appears to be standard, rather than Kölzer’s, which appears to inter-change the meanings of “warp” and “weft.”

Blalock

The Examiner finds that “Blalock discloses a woven (patterned) glass textile fabric comprised of a titer of 333 or 666 tex as the warp and weft.” (FR 8; Ans. 9, citing Blalock col. 2, ll. 49-59, col. 5, lines 18-33, and Example 1.) As for the silence of Blalock regarding the use of warp and weft fibers having tex values in the recited ranges, the Examiner holds that such values would have been obvious as a matter of routine determination of the optimum value of a result-effective variable. (FR 8; Ans. 10.)

Brandel denies that Blalock discloses using glass fibers with a titer of 333 or 666 tex as warp and weft. (Br. 11.) Review of Blalock, with emphasis on the portions cited by the Examiner, supports Brandel’s arguments. Blalock relates generally to processes and apparatuses for coloring textile yarns to produce “tone-on-tone” or “striated” appearances in woven fabrics. (Blalock, abstract; col. 1, ll. 16-25; col. 2, ll. 49-59.) While Blalock does disclose yarns identified as “666 TEX” and “333 TEX,” said to be available from Manville Sales Corporation in the United States (Blalock, col. 5, ll. 22-25), we find no credible evidence that Blalock suggests using such fibers as the warp. In Example 1, Blalock discloses treating 666 TEX yarn with a pigmented resin bath and using the resulting colored yarn to weave a fabric sample shown in Figure 3. (Blalock, col. 7, ll. 20-50.) A glance at Figure 3 shows a sample with lighter and darker broad horizontal bands and light colored, much thinner vertical bands. The horizontal bands appear to correspond to the 666 TEX glass fiber. The narrow bands do not appear to correspond to 333 TEX glass fibers, or to any other form of glass fiber.

Thus, regardless of whether the Examiner is correct that “666 TEX” refers to a glass fiber having a titer of 666 tex, the Examiner’s premise that Blalock describes textiles having warps *and* wefts of such glass fibers is not supported by credible evidence. Moreover, the Examiner has not explained what factors, if any, indicate that optimization of any of the factors associated with weaving glass yarns of various tex values would have led persons having ordinary skill in the art to fabrics having the warp and weft tex ranges recited in claim 1.

Accordingly, we REVERSE the rejections over Blalock.

C. Order

We AFFIRM the rejection of claims 1-9 under 35 U.S.C. § 102(b), alternatively under 35 U.S.C. § 103(a) in view of Kölzer.

We AFFIRM the rejection of claim 10 under 35 U.S.C. § 103(a) in view of the combined teachings of Kölzer and Workman.

We REVERSE the rejection of claims 1-6 under 35 U.S.C. § 102(e), alternatively under 35 U.S.C. § 103(a) in view of Tokarsky.

We REVERSE the rejection of claims 7, 9, and 10 under 35 U.S.C. § 103(a) in view of the combined teachings of Tokarsky and either Draxo or Edlund.

We REVERSE the rejection of claims 7 and 8 under 35 U.S.C. § 103(a) in view of the combined teachings of Tokarsky and Moll.

We REVERSE the rejection of claims 1-7, 9, and 10 under 35 U.S.C. § 103(a) in view of the combined teachings of either Draxo or Edlund, and Tokarsky.

We REVERSE the rejection of claims 1-6 under 35 U.S.C. § 103(a) in view of Blalock.

We REVERSE the rejection of claims 7, 9, and 10 under 35 U.S.C. § 103(a) in view of the combined teachings of Blalock and either Draxo or Edlund.

We REVERSE the rejection of claims 7 and 8 under 35 U.S.C. § 103(a) in view of the combined teachings of Blalock and Moll.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

PL Initial:
sld

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